

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
JUDICIAL COUNCIL

In the Matter of the Review of the

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Amendment to the Plan of the United

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States District Court for the Western District

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No. 246

of North Carolina in Implementation of

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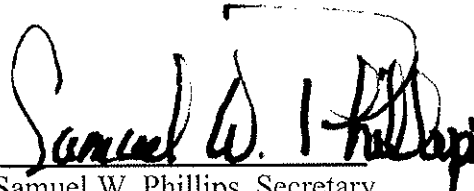
the Criminal Justice Act

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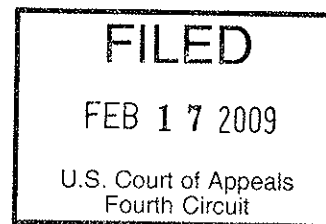
**ORDER**

The Plan of the United States District Court for the Western District of North Carolina , as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

  
Samuel W. Phillips, Secretary

Date: February 17, 2009



**CRIMINAL JUSTICE ACT PLAN**  
**FOR THE**  
**WESTERN DISTRICT OF NORTH CAROLINA**

Revised: January 12, 2009

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CRIMINAL JUSTICE ACT PLAN  
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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), section 3006A of title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, the judges of the United States District Court for the Western District of North Carolina adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.
2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (codified in part at section 848(q) of title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The Court, its Clerk, the Federal Defenders of Western North Carolina, Inc. (Federal Defender Office), the Panel Selection & Management Committee, and private attorneys appointed under the CJA shall comply with the *CJA Guidelines* approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.
2. Each private attorney shall be provided by the CJA Panel Administrator with a then- current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Federal Defender Office shall maintain a current copy of the *CJA Guidelines* for the use of members of the CJA Panel and shall make known to such attorneys its availability.

### III. DEFINITIONS

- A. "Representation" includes counsel and investigative, expert, and other services.
- B. "Appointed attorney" includes private attorneys appointed to the CJA Panel, or private attorneys appointed under special circumstances.

C. "Executive Director" is the chief attorney of the community defender organization who is selected by a board of directors and serves at the pleasure of the board of directors and in accordance with terms agreed upon by the Executive Director. There is no fixed term of office.

### IV. APPOINTMENT AND PAYMENT OF COUNSEL

#### A. District Plans

Each district court, with the approval of the judicial council, is required to have a plan for furnishing representation for any person financially unable to obtain adequate representation. A copy of a "Model Criminal Justice Act Plan" is included as Appendix III.

- (1) Representation shall be provided for any financially eligible person who:
  - (i) is charged with a felony or with a Class A misdemeanor;
  - (ii) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of title 18 U.S.C. (see 18 U.S.C. § 5034 with regard to appointment of counsel; for appointment of a guardian ad litem, see paragraph 3.14);
  - (iii) is charged with a violation of probation;
  - (iv) is under arrest, when such representation is required by law;
  - (v) is entitled to appointment of counsel in parole proceedings; [The reference to representation at parole proceedings was deleted from the Criminal Justice Act in accordance with the November 1, 1987 repeal of chapter 311 of title 18 United States Code. However, the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, has again extended the U.S.P.C., with regard to persons specified in the savings provisions, and certain laws relating to parole will remain effective until the expiration of the sentence received by other persons specified in the savings provisions. This includes laws governing the right to counsel in parole proceedings.];
  - (vi) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or

revocation of a term of supervised release (see, e.g., *Criminal Monetary Penalties: A Guide to the Probation Officer's Role*, Monograph 114, Chap. VI);

(vii) is subject to a mental condition hearing under chapter 313 of title 18, U.S.C. (see paragraphs 2.13 F and 2.22 B(2)(vi)(f), and Appendix H);

(viii) is in custody as a material witness;

(ix) is entitled to appointment of counsel under the Sixth Amendment to the Constitution, or faces loss of liberty in a case and federal law requires the appointment of counsel. This provision obviates the need for future amendments to the Criminal Justice Act each time the right to counsel may be extended to new situations by judicial decision or federal statutes. It also eliminates any doubt as to the application of the Act with respect to appointment of counsel for patients pursuant to title III of the Narcotic Addict Rehabilitation Act of 1966 (Ch. 2, title 42, U.S.C.) or for juveniles pursuant to the Federal Juvenile Delinquency Act (Ch. 403, title 18, U.S.C.);

(x) is seeking to set aside or vacate a death sentence in proceedings under section 2254 or 2255 of title 28, U.S.C.; and

(xi) is entitled to appointment of counsel in connection with prisoner transfer proceedings under section 4109 of title 18, U.S.C.

(2) Whenever the United States Magistrate Judge or the Court determines that the interests of justice so require, representation may be provided for any financially eligible person who:

(i) is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized; or

(ii) is seeking relief under section 2241, 2254, or 2255 of title 28 (but see paragraph 2.01 A(1)(x) regarding the mandatory appointment of counsel in death penalty habeas corpus cases and paragraph 2.14 regarding the requirement for appointment of counsel for an evidentiary hearing).

(3) Whenever the United States Magistrate Judge or the Court determines that the interests of justice so require, other cases or proceedings which may be covered or compensable under the Act include, but are not limited to the following (see also paragraph 2.22 B(2)):

(i) Counsel may be appointed under the Act for a person charged with civil or criminal contempt who faces loss of liberty.

(ii) Upon application of a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, counsel may be appointed where there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty.

(iii) Counsel may be appointed for financially eligible persons proposed by the U.S. Attorney for processing under a "pretrial diversion" program.

(iv) Counsel may be appointed for persons held for international extradition under chapter 209, title 18, United States Code.

(4) Whenever the United States Magistrate Judge or the Court determines that the interests of justice so require, representation may be furnished for financially eligible persons in "ancillary matters appropriate to the proceedings" pursuant to subsection (c) of the Act.

In determining whether a matter is ancillary to the proceedings, the court should consider whether the matter, or the issues of law or fact in the matter, arose from, or are the same as or closely related to, the facts and circumstances surrounding the principal criminal charge.

In determining whether representation in an ancillary matter is appropriate to the proceedings, the court should consider whether such representation is reasonably necessary to accomplish, *inter alia*, one of the following objectives:

- (i) to protect a Constitutional right;
- (ii) to contribute in some significant way to the defense of the principal criminal charge;
- (iii) to aid in preparation for the trial or disposition of the principal criminal charge;
- (iv) to enforce the terms of a plea agreement in the principal criminal charge;
- (v) to preserve the claim of the CJA client to an interest in real or personal property subject to a civil forfeiture proceeding pursuant to 18 U.S.C. § 983(b)(1)(A), 21 U.S.C. §881, 19 U.S.C. §1602 or similar statutes, which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act and paragraph 2.04 of these Guidelines; or
- (vi) to effectuate the return of real or personal property belonging to the CJA client which may be subject to a motion for return of property pursuant to Fed. R. Crim. P. 41(e), which property, if recovered by the CJA client, may be considered for reimbursement under subsection (f) of the Act and



paragraph 2.04 of these Guidelines.

The scope of representation in the ancillary matter should extend only to the part of the ancillary matter that relates to the principal criminal charge and to the correlative objective sought to be achieved in providing the representation (e.g., a CJA defendant in a criminal stock fraud case should be represented by CJA counsel at the defendant's deposition in a parallel civil fraud action for the limited purpose of advising him concerning his Fifth Amendment rights.)

Representation in an ancillary matter shall be compensable as part of the representation in the principal matter for which counsel has been appointed and shall not be considered a separate appointment for which a separate compensation maximum would be applicable under paragraph 2.22 B of these Guidelines. A private panel attorney appointed under the Act may obtain, through an *ex parte* application to the court, a preliminary determination that the representation to be provided in an ancillary matter is appropriate to the principal criminal proceeding and compensable under subsection (c) of the Act and this guideline. However, failure to obtain such a preliminary determination shall not bar the court from approving compensation for representation in an ancillary matter provided that the services and compensation related thereto are justified in a memorandum submitted by the attorney to the court at the conclusion of the principal criminal matter and the presiding judicial officer finds that such representation was appropriate.

Under 18 U.S.C. § 983(b)(1), if a person with standing to consent the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of title 18, United States Code, in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

In determining whether to authorize counsel to represent a person in a judicial civil forfeiture proceeding under a civil forfeiture statute, the court shall take into account such factors as:

- (i) the person's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith.

Criminal Justice Act Forms. The Judicial Conference of the United States, at its meeting in January 1965, approved the recommendation of its Committee to Implement the Criminal Justice Act of 1964, that every district incorporate in its plan a requirement that the standard forms, approved by the Conference, be used. (Copies of the pertinent forms are included in Appendix I.)

#### B. Eligibility for Representation

A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before a federal judge or magistrate, when formally charged, or when otherwise entitled to counsel under the Act, whichever occurs earliest. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate after making appropriate inquiries concerning the person's financial condition.

Unless it will result in undue delay, fact-finding concerning the person's eligibility for appointment of counsel should be completed prior to the person's first appearance in court. In the absence of the Federal Public Defender, other officers or employees of the court (i.e., clerk, deputy clerk, or Pretrial Services Officer) may be designated by the court to obtain or verify the facts upon which such determination is to be made. Relevant information bearing on the person's financial eligibility should be reflected on CJA Form 23 and the form shall be completed and executed before a judicial officer or employee. Employees of law enforcement agencies or United States attorney offices should not participate in the completion of the CJA Form 23 or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

C. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody; when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

D. Number and Qualifications of Counsel

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:

Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, two counsel should be appointed.

2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:

a. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must have been admitted to

practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Pursuant to 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the Federal Public Defender.

b. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.

Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

#### V. COMMUNITY DEFENDER ORGANIZATION

##### A. Establishment

1. Pursuant to subsections (g)(1) and (g)(2)(A) of the CJA, a Community Defender Organization for the Western District of North Carolina is hereby established. Upon organization of the community defender's office, presently named Federal Defenders of Western North Carolina, Inc., the Executive Director of the office shall notify this court that he or she is available to accept appointments for representation. A copy of the Bylaws of the community defender organization shall be found as Appendix II of this CJA Plan.

2. The community defender organization shall be capable of providing legal services throughout the district in all Divisions of the district and shall maintain an office in Charlotte, North Carolina and in Asheville, North Carolina.

B. Supervision of Defender Organization. The Executive Director shall be responsible for the supervision and management of the community defender organization. Accordingly, the Executive Director shall be appointed in all cases assigned to the community defender organization for subsequent assignment to staff attorneys at the discretion of the Executive Director.

C. Assignment of Community Defenders. The Executive Director will be responsible for the assignment of cases among the staff attorneys in that office. Accordingly, the court will assign cases in the name of the community defender organization rather than in the name of an individual staff attorney. The community defender organization shall immediately provide the name of the staff attorney assigned to a case to the appointing judge, magistrate judge or clerk's office.

- D. Management of the CJA Panel. The Executive Director shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix I of this CJA Plan.

## VI. PRIVATE ATTORNEYS

- A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who apply and are approved shall be placed on a Panel from which they can be appointed to provide representation under the CJA.
- B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.
- C. Management of CJA Panel. The Federal Defenders of Western North Carolina, Inc., with assistance from the Panel Selection & Management Committee, shall be responsible for the systematic distribution of cases to and for the management of the CJA Panel subject to the provisions of the Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act, found at Appendix I of this CJA Plan.
- D. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the district.

## VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. S 2254

The Federal Defenders of Western North Carolina, Inc., shall appoint a member or members of the Special Death Penalty Habeas Corpus Panel, or other attorneys who qualify for appointment pursuant to section 848(q) of Title 21, United States Code, to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under Section 2254 of Title 28, United States Code.

## VIII. DUTIES OF APPOINTED COUNSEL

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including the provisions of the American Bar Association's *Model Rules of Professional Conduct* and the

North Carolina Rules of Professional Conduct, including formal ethics opinions.

C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari (as governed by the circuit CJA plan provisions concerning representation on appeal), is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

#### IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf when counsel is required, shall promptly bring the individual before a judicial officer to determine whether he or she is financially able to secure representation. In such cases in which the person indicates that he or she is not able, the Federal Public Defender will be notified and shall discuss with the person the right to representation and right to appointed counsel, and if appointment of counsel seems likely, the Federal Public Defender will assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

B. Notice of Indictment or Criminal Information. Upon the return of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, unless sealed, the United States attorney or the probation officer, as appropriate, shall deliver a copy of the document to appointed counsel, or to the defendant if he is without counsel as soon as possible.

#### X. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of CJA Panel Administrator at the Office of the Federal Defenders. That office shall review the claim form for mathematical and technical accuracy and for conformity with the *CJA Guidelines*, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The court will

exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the Fourth Circuit.

APPENDICES:

I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

II. Bylaws of Federal Defenders of Western North Carolina, Inc.

III. Model Criminal Justice Act Plan.

Adopted and approved by the U.S. District Court Judges of this Court on the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Robert J. Conrad, Chief  
United States District Judge

\_\_\_\_\_  
Richard L. Voorhees  
United States District Judge

\_\_\_\_\_  
Frank D. Whitney  
United States District Judge

\_\_\_\_\_  
Lacy H. Thornburg  
United States District Judge

\_\_\_\_\_  
Martin L. Reidinger  
United States District Judge

APPROVED BY THE JUDICIAL COUNCIL OF THE  
CIRCUIT on \_\_\_\_\_ (month), (day), (year).

\_\_\_\_\_  
Karen J. Williams  
Chief Judge, United States Court of Appeals for the Fourth Circuit

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE.

This Plan shall become effective when approved by the Judicial Council of the Fourth Circuit.

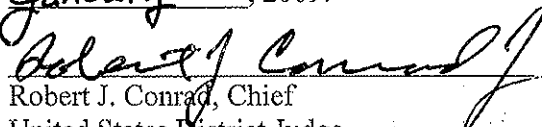
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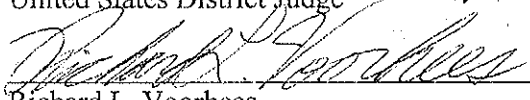
I. Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act

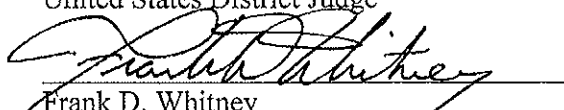
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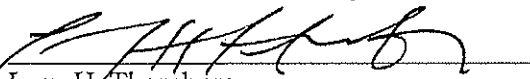
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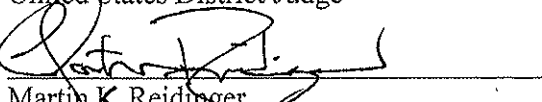
Adopted and approved by the U.S. District Court Judges of this Court on the 26<sup>th</sup> day of January, 2009.

  
Robert J. Conrad, Chief  
United States District Judge

  
Richard L. Voorhees  
United States District Judge

  
Frank D. Whitney  
United States District Judge

  
Lacy H. Thornburg  
United States District Judge

  
Martin K. Reidinger  
United States District Judge

APPROVED BY THE JUDICIAL COUNCIL OF THE  
CIRCUIT on \_\_\_\_\_ (month), (day), (year).

\_\_\_\_\_  
Karen J. Williams  
Chief Judge, United States Court of Appeals for the Fourth Circuit

## APPENDIX I

### PLAN FOR THE COMPOSITION, ADMINISTRATION AND MANAGEMENT OF THE PANEL OF PRIVATE ATTORNEYS UNDER THE CRIMINAL JUSTICE ACT

#### **I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS**

##### **A. CJA PANEL**

###### **1. Approval.**

The Federal Defender of Western North Carolina, Inc., ("Federal Defender") shall establish a panel of private attorneys (hereinafter referred to as the 'CJA Panel') who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Federal Defender shall approve attorneys for membership on the panel after receiving recommendations from the Panel Selection & Management Committee, established pursuant to paragraph B. of this Plan.

###### **2. Size.**

The Federal Defender shall fix, periodically, the size of the CJA Panels. The number of lawyers on the CJA Panels must be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation. The Federal Defender will create four CJA Panels ("General," "Special Death Penalty Panel," "Special Habeas Death Penalty Panel" and "Training").

Given that the current range of CJA appointments is approximately 350-475 each year, the initial size of the new CJA General Panel will be as follows:

Charlotte/Statesville – 80----- lawyers  
Asheville/Bryson City –40---- lawyers

###### **3. Range of Case Assignments.**

In making case assignments to the CJA panel attorneys, the Federal Defender shall consider making sufficient assignments that allows each CJA Panel attorney to continue to develop federal defense skills and experience, while promoting a fair distribution of case assignments to each member of the CJA Panel. The assignment process will be reviewed by the CJA Panel Selection & Management Committee on an annual basis, based upon a review of appointment records maintained by the Federal Defender.

###### **4. Minimum Eligibility.**

Attorneys who serve on the CJA Panel must complete a CJA Application (which requires various



attachments), and must meet certain minimum requirements. In particular, each CJA Panel attorney:

- a) Must be licensed to practice law in North Carolina and a member in good standing of the State Bar of North Carolina (confirmed by accompanying Certificate of Good Standing), as well as the federal bar of the Western District of North Carolina (WDNC);
- b) Must be admitted to practice before the United States Court of Appeals for the Fourth Circuit;
- c) Should have at least two (2) years experience in federal criminal law, or a minimum of five (5) years of state criminal law experience;
- d) Must have participated as "first chair" in at least two (2) felony federal criminal cases, **or** participated as "second chair" in at least two (2) felony federal criminal trials as a member of the CJA Training Panel (under the guidance of a lawyer on the CJA Panel);
- e) Must certify and demonstrate experience in, and knowledge of Federal Criminal Law, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the United States Sentencing Guidelines;
- f) Must certify that they have access to: i) a physical office location; ii) on-line or other computer assistance legal research and a computer with unlimited access to the internet; iii) an active Log-In Account with ECF in Western District of North Carolina; and iv) telephone answering machine or equivalent telephone answering service.
- g) Must submit three (3) letters of recommendation from state or federal judges; or from attorneys with significant federal criminal defense experience (or who are on the CJA Panel) who support the applicant's competence to represent indigent defendants charged with federal crimes; and
- h) Must be willing to serve, if asked, i) to be a mentor to attorneys on the CJA Training Panel; or ii) to assist with CJA training programs; or iii) to serve on the Panel Selection & Management Committee.
- i) Must agree to attend at least 6 hours of C.L.E. pertaining to federal criminal law each year.

##### 5. CJA Training Panel

Each year, the Panel Selection & Management Committee may also establish a "CJA Training Panel," consisting of attorneys who lack the requisite federal trial experience, but who otherwise meet all of the other eligibility requirements for the CJA Panel. Training Panel members may be assigned, by the Federal Defender, to assist members of the CJA Panel in a "second chair" capacity (with no compensation from the court), as well as to handle cases on their own that involve supervised release violations, probation violations, or misdemeanors. Before being eligible to apply to the full CJA Panel, the Training Panel members will be required to complete the following minimum requirements:

- 1) Observe one (1) felony trial (with no involvement);
- 2) Participate in a "second chair" capacity in (2) felony cases;
- 3) Attend at least two (2) seminars related to federal criminal law that are approved by the Panel Selection & Management Committee.

With regard to the trial related requirements listed above, the CJA Training Panel attorney is not limited to obtaining this experience with CJA cases. It shall be the responsibility of the CJA Training Panel member to obtain written confirmation for each of these minimum requirements, including a written confirmation from the presiding judge and the mentoring lawyer regarding the lawyer's "observation" and/or "participation."

CJA Training Panel members are not eligible to receive appointments independently, and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel, nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

6. Equal Opportunity.

All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition.

7. Terms.

The initial CJA Panel established pursuant to this Plan will be divided into THREE groups, equal in number. Members will be assigned to one of the three groups on a random basis. Members of the first group will serve on the panel for a term of one year, members of the second group will serve on the panel for a term of two years, members of the third group will serve on the panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of THREE years. The annual appointments will coincide with the fiscal year of the federal government, and will therefore be effective on October 1 of each year. There is no limit to the number of terms that a panel attorney may serve.

8. Removal of CJA Panel Members

A member of the CJA Panel may be removed from the Panel prior to the expiration of his or her term by the District Court, as well as by the Panel Selection & Management Committee, whenever the District Court<sup>1</sup> or the Panel Selection & Management Committee determines that the member has failed to fulfill the obligations of Panel membership or has engaged in other conduct which renders it inappropriate that he or she be continued as a Panel member. All complaints concerning the conduct of Panel members shall be forwarded to the Chairperson of the Panel Selection & Management Committee. If the Chairperson determines that the complaint alleges facts which, if true, would warrant consideration of removal of the Panel member, the Chairperson shall direct a subcommittee of at least five (5) members of the CJA Panel Selection & Management Committee to review the complaint, make such inquiry as it deems appropriate, and issue a report of its findings. The report and recommendations of the Committee shall be presented to the Panel Selection & Management Committee which shall have authority to remove the attorney from the Panel (by a majority vote) or to take such other action as it deems appropriate. The internal deliberations of the Panel Selection & Management Committee will be treated as confidential and the report and recommendations will not be considered a public document. However, the CJA Panel member under review will be provided with a summary of the complaint, as well as a summary of the Panel's final decision. During the course of the complaint review process outlined above, the District Court and/or the Panel Selection & Management Committee both have the sole and independent discretion and authority to immediately prohibit making any further appointments to the CJA Panel member under review.

9. Reappointment.

A member of the CJA Panel is eligible for reappointment to the panel immediately following expiration of his or her term. However, prior to every reappointment, each attorney must be subjected to peer review based upon the cases that he or she handled during the prior term.

10. Application Form.

The CJA Application Form will be available on the websites for the U.S. District Court and Federal Defenders of Western North Carolina. Completed applications shall be submitted to the Community Defender who will transmit the applications to the Chairperson of the Panel Selection & Management Committee.

11. Non-Retroactivity (Limited "Grandfathering" of Current CJA Panel Members).

This CJA Plan shall become effective thirty (30) days after approval by the United States Fourth Circuit Court of Appeals and will only control CJA appointments made after this date. This Plan shall not be retroactive in that it will have no impact on case assignments that were made prior to the Plan's adoption. Therefore, any lawyer who is currently assigned to a pending matter shall continue to represent that indigent defendant, regardless of whether they meet the new eligibility requirements.

Once the new CJA Plan becomes effective, no appointments will be made to any attorney who had not been selected and approved for the new CJA Panel. Therefore, all lawyers seeking membership to this new CJA Panel must apply by completing the CJA Questionnaire and Application Form.

B. PANEL SELECTION & MANAGEMENT COMMITTEE

1. Membership.

A Panel Selection & Management Committee shall be established by the Federal Defender in consultation with the Court. The Committee shall consist of no more than nine (9) members, including the following:

- a) The Federal Defender;
- b) The CJA Panel Representative;
- c) Federal Defense Private Practitioners:
  - i) Charlotte/Statesville- 5 lawyers
  - ii) Asheville/Bryson City/Shelby - 2 lawyers

2. Duties.

- a) The Panel Selection & Management Committee shall meet at least once a year (preferably twice) to consider applications for the vacancies created by the terms expiring

each year. Additional meetings of the entire Committee or a subcommittee can occur on an "as needed" basis for purposes of reviewing complaints and addressing other issues. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill the vacancies.

At its annual meeting, the Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the Court any changes deemed necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments.

b) If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the Panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval. Members approved by the Court to fill mid-term vacancies shall serve until the expiration of the term that was vacated, and shall be immediately eligible for reappointment, provided that the portion of the expired term actually served by the member did not exceed eighteen months.

c) When the Committee submits the names of applicants for panel membership to the Court for approval, the Committee shall furnish information to the Federal Defender regarding recruitment efforts undertaken by the Committee in furtherance of the Equal Opportunity statement in Paragraph I.A.6. of this Plan. At least once each year the Committee shall provide the Court with information on the panel of attorneys in each of the categories listed in paragraph I.A.6. of this Model Plan.

## **II. SELECTION FOR APPOINTMENT**

### **A. MAINTENANCE OF LIST AND DISTRIBUTION OF APPOINTMENTS**

The Federal Defender shall maintain a current list of all attorneys included on the new CJA Panel, with current office addresses, e-mail addresses, telephone numbers, fax numbers, as well as a statement of qualifications and experience. The Federal Defender shall furnish a copy of this list to each judge and magistrate judge. The Federal Defender shall also maintain a public record of: 1) assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys on the CJA Panel; and 2) each instance where the CJA Panel member refused to accept a case appointment as well as the reasons for this refusal. If the Federal Defender determines that a CJA Panel member has repeatedly refused to accept case assignments, the Clerk has the discretion to refer that member to the Panel Selection & Management Committee for appropriate action.

### **B. METHOD OF SELECTION**

Appointments from the list of private attorneys should be made on a rotational basis, subject to the Federal Defender's discretion to make limited exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA

Panel, and quality representation for each CJA defendant. If an attorney refuses to accept a particular case appointment, and that attorney has not already exceeded the maximum number of cases corresponding to the Panel to which they are assigned, the Federal Defender shall record this refusal, and place that attorney at the bottom of the rotation list.

Once the need for the appointment of counsel arises, the judge or magistrate judge shall notify the CJA Panel Administrator or designee of the need for counsel and the nature of the case.

The CJA Panel Administrator shall advise the Judge or Magistrate Judge as to the status of distribution of cases, where appropriate, as between the panel of private attorneys. If the Magistrate Judge or Judge decides to appoint an attorney from the CJA Panel, the CJA Panel Administrator shall determine the name of the next panel member on the list who has handled, or assisted in, a case of equal or greater complexity than the case for which appointment of counsel is required, and who is available for appointment, and shall provide the name to the Clerks Office.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate judge may appoint any attorney from the list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the CJA Panel Administrator as to the name of the attorney appointed and the date of the appointment.

For those cases where an attorney is appointed after a trial has taken place, but prior to sentencing, this appointment shall be recorded as a "partial" appointment and not one entire case assignment for purposes of calculating the number of case assignments for each attorney on the CJA Panel or the case assignment rotations.

### **III. COMPENSATION - FILING OF VOUCHERS**

Claims for compensation shall be submitted, on the appropriate CJA form, to the Federal Defenders Office, Attn. CJA Panel Administrator. Vouchers should be submitted no later than 45 days after the final disposition of the case, unless good cause is shown. The CJA Panel Administrator shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate judge. If the Court determines that any reductions are warranted, the Court should give appropriate notice to the attorney with an opportunity to respond or comment.

<sup>1</sup>The District Court may remove an attorney from the Panel at any time without referring the matter to the Panel Selection & Management Committee. Also, an individual District Court Judge may direct an attorney not be appointed to any of that Judge's assigned cases without causing the attorney to be removed from the CJA panel as to other District Court Judges' cases.